IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5442 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

RAHIMSHA AKBARSHA DIWAN

Appearance:

1. Special Civil Application No. 5442 of 2002

MR ASHISH M DAGLI for Petitioner No. 1

MR MTM HAKIM for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 13/08/2002

ORAL JUDGEMENT

#. Rule. Mr.Hakim waives service of rule for the respondent. With the consent of the parties, the matter is taken up for final hearing today.

#. The petitioner - Corporation has challenged the award passed by the Labour Court, Vadodara in Reference (LCV) No.1 of 1998. By the impugned award, the Labour Court has passed the order of reinstatement in favour of respondent - workman with 75% of back wages. The Labour Court has given cogent reasons in the award for passing the order of reinstatement in favour of the concerned workman. It is not in dispute that the concerned workman was suffering from physical ailment, as, he was suffering from Rheumatic Arthritis. It is the say of the concerned workman that, his strenuous service as driver, has, ultimately, resulted into the aforesaid disease. The respondent workman, thereafter, requested the Corporation to give him alternate employment, yet the Corporation instead of obliging him by offering him alternate employment, terminated his services on the ground that, he went on leave unauthorisedly, and on that ground, his services were put to an end. The said order of the Corporation resulted into the industrial dispute. The Labour Court, after considering the evidence on record and Regulations of the Corporation, and after considering the facts and circumstances of the case, came to the conclusion that the Corporation should have offered alternate employment to the concerned workman, and, since that was not done, the order of dismissal was set aside and the respondent workman was reinstated in service with 75% back wages.

#. At the time of hearing, Mr.Dagli, learned advocate, for the petitioner, has, mainly, attacked the award on the question of payment of back wages. Initially, this court has also issued the notice to the respondent workman on the limited question of payment of back wages. In response to the notice, Mr.Hakim, who is appearing for the respondent workman, has submitted that the respondent workman is in very miserable condition and all throughout he was totally unemployed because of the physical ailment. Ultimately, both the learned advocates, has left the question of payment of the back wages to the Court.

#. Considering the facts and circumstances of the case, in my view, it would be just and proper to award 25% back wages in all to the respondent - workman for the intervening period. The respondent - workman, however, will be entitled to continuity of service, periodical increments and other such benefits, which otherwise he would be entitled to. The award of the Labour Court is accordingly modified to the aforesaid extent and the respondent workman will be entitled to 25% back wages for

the intervening period. The petitioner - Corporation is directed to reinstate the respondent - workman with 25% back wages and pay him the aforesaid benefits by 31.10.2002. After the reinstatement, if any application is made by the respondent - workman for changing his division from Vadodara to Nadiad, as submitted by Mr.Hakim, the Corporation may consider the said request sympathetically and may pass appropriate order in this behalf as early as possible and as per the Rules.

#. Subject to what is stated above, this petition is partly allowed. Rule is made absolute to the extent indicated above with no order as to costs.

(P.B.Majmudar,J)
(pathan)